IN THE HIGH COURT OF BOMBAY AT GOA
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CIVIL REVISION APPLICATION NO. 246 OF 2002

Mrs. Martinha Fernandes
w/o Isaac Coutinho, d/o
late Inacio Caitano
Fernandes, major in age,
housewife, r/o H.No.114,
Agonda, Canacona, Goa. ...Petitioner

Versus

Mrs. Lucy Coutinho, d/o
Amrosio Mariano Fernandes,
wife of Francisco Coutinho,
major in age, housewife,
r/o H.No.84, Agonda,
Canacona, Goa. ...Respondent.

Ms. Sudha C. Pai Kir, advocate for the petitioner.

Shri P. A. Kamat, advocate for the respondent.

CORAM : F. I. REBELLO, J.

DATE : 18th July, 2003.

ORAL JUDGMENT

The petitioner in the instant case has filed a suit against the respondent for an injunction on the ground that she is the owner of the property as set out in the plaint.

2. The defendant apart from filing her written statement has also pleaded that there is a mundkarial area and that the petitioner is interfering with the mundkarial rights of the respondent. When the counter-claim was filed, instead of filing the written statement the petitioner took out an application for rejecting the counter-claim. Really speaking it ought not to have been entertained. At any rate that technicality need not deter us.

In the application, nowhere has the petitioner set out that she is the bhatkar of the respondent in respect of that mundkarial area. If such a plea had been taken the question perhaps could have been considered whether the counter-claim as filed could be maintainable. In the instant case, the petitioner has come to the Court on the ground that she is the owner of the property and to restrain the respondent from interfering with her rights in the suit property. The respondent has come to the Court contending by counter-claim that it is his mundkarial area and therefore, the petitioner cannot interfere with that portion of the property. On the pleadings as they now stand, it cannot be said that the order of the trial Court suffers from an error apparent on the face of the record, or error of jurisdiction and in these circumstances there is no merit in this revision application. Considering that this Court stayed the trial Court from proceedings with the counter-claim, the trial Court, if the petitioner herein files her written statement within two weeks from today, to accept the written statement to the counter-claim.

With the above directions, the Civil Revision Application stands disposed of with no order as to costs.

F. I. REBELLO, J.

mc.